

3 February 2025

## **Case Reference IC-353732-J8K9**

### **Request**

You have asked for all documentation in relation to a personal data breach by The Pizza Post, dealt with under case reference IC-351566-Z8H1.

We received your request on 6 January 2025.

Your request has been handled under the Freedom of Information Act 2000 (the FOIA).

### **Our response**

We can confirm that we hold information within the scope of your request.

The ICO received a report of a personal data breach from the Pizza Post on 16 December 2024. This breach was investigated under case reference IC-351566-Z8H1.

For this particular incident, we found that further regulatory action was not required, in line with our line [Communicating our Regulatory and Enforcement Activity Policy](#) and advice was provided to Pizza Post on how to further improve their information rights practices.

However, we are unable to disclose the requested information to you as the information is exempt from disclosure. The information that Pizza Post has shared with us is exempt by virtue of section 44 of FOIA and the information we have sent in return is exempt by virtue of section 31 of FOIA. Further details about these exemptions can be found below.

### **Section 44 of the FOIA**

Section 44 is an absolute exemption which does not require consideration of the public interest test of the type required by a qualified exemption.

Section 44(1)(a) of the FOIA states;

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

- a. is prohibited by or under any enactment'

In this case, the Data Protection Act 2018, Part 5, section 132 prohibits the disclosure of confidential information that –

- a. has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,
- b. relates to an identified or identifiable individual or business, and
- c. is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources, unless the disclosure is made with lawful authority.

Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

We do not consider that we have lawful authority to disclose the information which has been provided to us in confidence in our capacity as a regulatory authority.

## **Section 31 of the FOIA**

The information we sent to Pizza Post is being withheld pursuant to Section 31(1)(g) of the FOIA. This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information "would, or would be likely to, prejudice - ...the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

The purposes referred to in sections 31(2)(a) and (c) are –

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise..."

This exemption is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. That is, we must consider whether the public interest favours withholding or disclosing the information.

We consider that disclosure is likely to prejudice the exercise of the ICO's regulatory functions.

Disclosing information in relation to data breach reports or security incidents is likely to dissuade organisations from reporting these incidents in the future. This is because such breach reports and associated outcomes contain sensitive information which is provided to the ICO in confidence. The ICO relies on the co-operation of data controllers, and we feel this is best achieved by an open, voluntary, and uninhibited exchange of information with these organisations. If a data controller, or any other person, believes that information that they provide to us will be shared with the public, it could make organisations reluctant to engage with the ICO in the future.

This could lead to the information gathering process becoming more difficult for the ICO, which makes it harder for us to function as a regulator. We need to provide assurance that details we receive as well as information that we generate in the process of handling a data breach incident are treated securely and used for regulatory purposes. If there is less trust in the ICO's practices, this will put the ICO in a weaker position to monitor, respond and make decisions.

With this in mind, we have now considered the public interest test for and against disclosure.

In this case the public interest factors in favour of disclosing the information are as follows;

- Increased transparency in the way in which we carry out our investigations.
- The understandable interest of the public, and those data subjects affected by this incident in the details of the data breach.

The public interest factors in maintaining the exemption are as follows;

- We consider that disclosure of this information would be likely to compromise our ability to conduct future investigations and therefore affect the discharge of our regulatory function in vital areas, including our ability to influence the behaviour of data controllers and to take formal action.

- There is public interest in us being able to maintain effective and productive relationships with the parties we communicate with. It is essential that organisations continue to engage with us in a constructive and collaborative way without fear that the information exchanged between us will be made public if it is inappropriate to do so.
- There is a public interest in the ICO maintaining effective working relationships with other data controllers based on the confidential sharing of relevant information to help facilitate compliance with the legislation we regulate.

Having considered the arguments both for and against disclosure we do not find that there is sufficient weight in the arguments that favour disclosure. We consider that we need a 'safe space' in which to fulfil our regulatory function and to determine any regulatory action we may choose to take, without undue external influence.

This concludes our response to your information request.

## **Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

## **Your information**

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

We're currently running an email survey to find out what customers think of our services and would like you to take part. The survey will take a few minutes to complete and will help us understand what we can do to improve our services in the future.

The [Institute of Customer Service](#) is running the survey on our behalf.

If you **don't** want them to email you our survey, please let us know by responding to this email by 17 February 2025 and we won't include you. There is information about the [right to object to the use of your data](#) on our website

Yours sincerely



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